

REMARKS

Status of Claims

Claims 1-2 and 4-11 are pending, of which claims 1 and 11 are independent.

Claims 1, 10 and 11 have been amended to correct informalities in the claim language and to more clearly define the claimed subject matter. Claim 1 has been amended to incorporate the subject matter of original claim 3. Claim 3 has been cancelled without prejudice. Care has been taken to avoid introducing new matter.

Rejection under 35 U.S.C. §112, second paragraph

Claim 3 was rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Applicants traverse this rejection for at least the following reasons.

Applicants respectfully remind the Examiner that the test for definiteness under 35 U.S.C. 112, second paragraph, is whether “those skilled in the art would understand what is claimed when the claim is read in light of the specification.” *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576, 1 USPQ2d 1081, 1088 (Fed. Cir. 1986). In light of the specification, it is clear to one of skill in the art that 7-27 % **by weight** of sulfuric acid is measured with respect to the total weight of the electrolyte. In amended claim 1, the subject matter of original claim 3 has been incorporated to recite “*the electrolyte containing 7 to 27 % by weight of sulfuric acid,*” which clearly indicates that the sulfuric acid is measured with respect to the total weight of the electrolyte. Thus, amended claim 1 meets the requirement of 35 U.S.C. 112, second paragraph.

Claim 10 was rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Applicants submit that the amendment made to claim 10 overcomes this rejection. Since claim 10 is not rejected over the prior art, claim 10 is allowable.

Rejections under 35 U.S.C. §103

Claims 1, 2, 4-8 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over JP 8-321328 in view of CN 2069172, Bunsh et al. (US 6,403,264) and Ruiz Rodriguez et al. (US 6,528,206). Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over JP 8-321328 in view of JP 63-244568. Applicants traverse these rejections for at least the following reasons.

Applicants respectfully submit that, at a minimum, none of the cited references discloses or suggests that the electrolyte contains 7 to 27 % by weight of sulfuric acid, when the battery is stored before injection of an electrolyte (a lead battery that becomes usable by injecting an electrolyte thereinto), as recited by claims 1 and 11.

In the present disclosure, the concentration of sulfuric acid in the electrolyte is reduced when the lead battery is stored compared with the concentration when the battery is in use. For example, when the battery is stored, the concentration of sulfuric acid is adjusted to 7-27 % by weight. When the lead battery is used, the concentration of sulfuric acid is adjusted to be 37 % by weight by adding an electrolyte (see, paragraph [0053] of the specification). By reducing the concentration of sulfuric acid when stored, it is possible to obtain long remaining and recovery discharge durations, good self-discharge characteristics and good charge acceptance (see, Table 1 of the specification).

Turning to the cited references, Applicants respectfully submit that JP '328 fails to disclose the claimed concentration of sulfuric acid and reducing the concentration of the sulfuric acid when stored. Further, since JP '328 is directed to a sealed lead battery, JP '328 does not disclose a lead battery that becomes usable by injecting an electrolyte thereinto.

As such, it is clear that JP '328 fails to disclose the above identified features of amended claims 1 and 11. It is also clear that the remaining cited references do not cure the deficiencies of JP '328, and it would not have been obvious to add these features to any combination of the cited references. Accordingly, claims 1 and 11 and all claims dependent thereon are patentable over the cited references. Thus, it is requested that the Examiner withdraw the rejections of claims 1, 2, 4-9 and 11 under 35 U.S.C. § 103(a).

CONCLUSION

Having fully responded to all matters raised in the Office Action, Applicants submit that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicants' attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Takashi Saito
Limited Recognition No. L0123

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 MEF:TS:MaM
Facsimile: 202.756.8087
Date: May 7, 2010

**Please recognize our Customer No. 53080
as our correspondence address.**